



Commission Marks 25th Anniversary

November 26, 2003 holds special significance for the Commission, as it marks the 25th Anniversary of its creation. The Commission was established by Act 1978-319 (November 26, 1978) and was organized in April 1979 during its first meeting.

The first set of proposed sentencing guidelines was submitted to the Pennsylvania General Assembly on January 24, 1981, but was rejected by both chambers, viewed as too lenient to deter crime and too constraining on judicial discretion to give tougher sentences. A revised set of proposed guidelines was submitted to the Legislature on January 23, 1982 and

took effect July 22, 1982.

Eight subsequent revisions to the sentencing guidelines have been submitted to and approved by the General Assembly, the most recent in 1997. Earlier this year, the Commission formally established a Guideline Revision Subcommittee, chaired by District Attorney and Commission Vice-Chair Merritt E. "Ted" McKnight. Proposed modifications to the 1997 guidelines are anticipated during 2004.

To mark this milestone, the Commission has prepared *A Compendium of Sentencing Research*, a collection of abstracts

from selected academic articles published by the Commission or with sentencing data it has collected during the past twenty-five years.

25th
Anniversary

During this anniversary period, the Commission is hosting events to recognize the contribution of previous members, the General Assembly, and The Pennsylvania State University to its success.

Major Changes in DUI Statute

Act 2003-24, signed September 30, 2003, not only reduced Pennsylvania's DUI per se BAC to 0.08, but also completely restructured the penalties and added a mandatory treatment provision. The repeal of the current DUI statute (75 Pa.C.S. §3731) on February 1, 2004 brings about the following new offenses:

- ⇒ 75 Pa.C.S. §3802(a) **General Impairment (BAC 0.08-0.099)**
- ⇒ 75 Pa.C.S. §3802(b) **High Rate of Alcohol (BAC 0.10-0.159)**
- ⇒ 75 Pa.C.S. §3802(c) **Highest Rate (BAC 0.16 & higher)**
- ⇒ 75 Pa.C.S. §3802(d) **Controlled Substance**
- ⇒ 75 Pa.C.S. §3802(e) **Minors**
- ⇒ 75 Pa.C.S. §3802(f) **Commercial or School Vehicles**
- ⇒ 75 Pa.C.S. §3808 **Ignition Interlock**

As with the current DUI statute, the statutory grading and the mandatory penalties are affected by the number of prior convictions. A prior conviction includes an offense under §3802, an offense under §3731, and a substantially similar offense in another jurisdiction. The look-back period is now ten years.

Inside this issue:

Commission Partnerships & Collaboration	2
Recent Commission Activities & Decisions	3
Key Sentencing-Related Decisions	3
Sentencing Guidelines Q&A	3
Back page: Com. v. Wilson	4

2004 Scheduled Training Sessions

- Wednesday, Feb. 25* (PCCD, Harrisburg)
- Intro to Sentencing (3 CLE)
- Wednesday, Apr. 7* (PCCD, Harrisburg)
- 5th Edition Guidelines (6 CLE)
- Wednesday, May 19* (PCCD, Harrisburg)
- In-Depth Look at Sentencing (3 CLE)

For more information, or to schedule an on-site training session, contact Carrie Peters [(814) 863-2797, ext. 2 or carriep@psu.edu].

Commission Partnerships & Collaboration

Since 1981, the Pennsylvania Commission on Sentencing has been based on the University Park campus of The Pennsylvania State University. In 1997, the Commission and the University formalized this long-standing research partnership through a *Memorandum of Understanding*, agreeing to a framework whereby the Commission would continue to receive free office space, utilities and support in exchange for the funding of faculty and student positions to undertake sentencing research of interest to both parties. The Commission recently negotiated a five-year extension to this MOU.



A partnership such as that with Penn State is not new to the Commission. Since the early 1990's, the Commission has arranged with the Pennsylvania Commission on Crime and Delinquency (PCCD) to jointly hire several employees who work for both agencies, and more recently collaborated with the Pennsylvania Justice Network (JNET) to add staff positions. This past summer, the Commission purchased and installed video-conferencing equipment at three strategic locations throughout the state: Duquesne University School of Law in Pittsburgh, the Legislative Office for Research Liaison in Harrisburg, and the Villanova University School of Law in suburban Philadelphia. Through agreements with these three entities, the Commission now has a 'presence' statewide, and the equipment is proving its worth in facilitating meetings with members and the public, increasing collaboration with the two law schools, and improving ties with another Legislative Services agency.



The availability of video-conferencing with the Law Schools support several projects currently underway. A faculty member at Duquesne Law is Counsel to the Commission, and the Commission has contracted with students there to provide legal research and support. The Commission is also working with Duquesne Law on two ongoing efforts: a Sentencing & Sanctions course, an elective that was offered for the first time this fall and will be offered each fall semester at the Law School; and an annual Pennsylvania Sentencing Update, a Law Review article that will be published each spring in the Duquesne Law Review. At Villanova Law, the Commission is providing support for sentencing workshops for judges. Based on a model developed at Yale Law School, this workshop series brings together law school students, criminal court judges, criminal law practitioners, and others for three weekends to discuss sentencing policy through the lens of pre-screened, real cases. This is the second year that Commission member and Villanova Law Professor Steven Chanenson will be coordinating the workshop series.

The Commission looks for partnership opportunities whenever possible, so as to control costs while meeting its many responsibilities. In the area of data management, the Commission has deployed its sentencing guidelines web application (SGS Web) within the Commonwealth's Justice Network (JNET) in order to leverage both the infrastructure and security, and to facilitate interfaces with existing court data. In the area of field services, the Commission is developing three specialized training seminars in response to requests from criminal court judges, and is collaborating with other state agencies to provide these training sessions. And in the area of research and policy development, the Commission continues its work with both state and county agencies on the evaluation of sentencing programs, the drafting and review of legislation, and the revision of the sentencing guidelines. This level of activity would not be possible without effective partnerships with other agencies and universities.



For the last several years, the Commission has been involved in two research partnerships with faculty at The Pennsylvania State University. The Restrictive Intermediate Punishment Evaluation [RIP] Project, under the direction of Professor John Kramer, is examining the effectiveness of RIP sentences involving drug and alcohol treatment. In 1998 the legislature allocated \$10 million for the implementation of RIP programs involving substance abuse, which was increased to \$13 million in 2001. While Phase I of this project found funding to be an important stimulus for diverting offenders from incarceration to these alternative programs, the next crucial policy issue is whether drug treatment is an effective alternative to incarceration. The current phase of the project will help to answer that question. The Victim Restitution/Compensation [VRC] Project, under the direction of Professor Barry Ruback, is examining the imposition and payment of the various economic sanctions imposed on offenders, including mandatory provisions such as restitution and victim compensation assessments. The findings from this research will contribute to our understanding of best practices relating to restitution and victim compensation orders and payments, and the potential impacts in terms of increased collections and reduced recidivism if these efforts are maximized.



Both the RIP and VRC Projects have benefited tremendously from the work of four graduate students and twelve undergraduate students from PSU who traveled throughout the state this summer to collect information from court and probation records. This experience also provided the students with the opportunity to enhance their research capabilities and to expand their knowledge of the criminal justice system – not only through official records but also in their observations of, and conversations with, the many personnel who assisted them in the counties.



Recent Commission Activities & Decisions

The Commission held its annual strategic planning session on August 19, 2003, and hosted a reception and dinner that evening for faculty and administrators of The Pennsylvania State University. The gathering was organized to recognize Penn State for its support of and involvement with the Commission during the past twenty-five years, and to note the successful completion of the five-year MOU. The Commission also held quarterly meetings on August 20 in State College and December 10 in Philadelphia. A summary of key decisions is found below.

Budget & Management

Professor Steven L. Chanenson (Villanova Law) was re-appointed to the Commission by Governor Edward G. Rendell. The Commission approved a five-year MOU with The Pennsylvania State University for continued research and support, and a five-year MOU with the Duquesne University School of Law for legal research and support. The Commission also approved the purchase, installation, and support of video-conferencing equipment at three remote

locations. A FY2004/2005 zero-growth budget request of \$992,000 was approved and submitted. The following grant applications were approved:

- SGS Web Expansion & support
- SGS Web Interface, Enhancement & Support
- Information Technology Assistance & communication
- Restitution/Collections Evaluation Project

Data & Field Services

Efforts continue on the development of an interface between SGS Web and the AOPC/CP system, with completion anticipated in early 2004. In light of the substantial amendments to the DUI statute, an enhancement to SGS Web providing for the new penalties is scheduled to be completed by February 2004. The Commission voted to require all counties to submit sentencing information to the Commission via SGS Web beginning in 2005, contingent on the deployment of AOPC/CP in the county. Additionally, in order to improve the availability of current sentencing data, the Com-

mission will begin entering 2004 guideline forms immediately upon receipt, and postpone entry of earlier forms. The Commission approved a streamlined notification process as part of the *Release of Information Policy*, and sent information on the change to all criminal court judges.

Research

The Commission approved a *Research Bulletin* summarizing the impact of previous guideline revisions (see enclosed), and the *2003 Boot Camp Legislative Report* for submission to the General Assembly prior to February 1, 2004.

Policy

The Guideline Revision Subcommittee has met on several occasions and has begun the process of assigning offense gravity scores to new or modified offenses. The committee has prepared a tentative enhancement proposal for homicide by vehicle in an active work zone, as required by statute, and a streamlining of the 'totally concurrent' policy. All subcommittee recommendations will be presented to the Commission during the February 2004 quarterly meeting for further discussion.

Key Sentencing-Related Decisions (July 2003-November 2003)

Brief summaries of these and other cases are now found at the "Sentencing Guidelines & Information" tab on the Commission's web site: <http://pcs.la.psu.edu>

Concurrent/Consecutive

Com. ex rel Smith v. DOC (829 A.2d 788)

Com. v. Larkins (829 A.2d 1203)

Com. v. Mouzon (828 A.2d 1126)

Enhancement

Com. v. Wilson (829 A.2d 1194)

Guidelines

Com. v. Simpson (829 A.2d 334)

Com. v. Felmlee (828 A.2d 1105)

Com. v. Anderson (830 A.2d 1013) ►►

Mandatories

Com. v. Belak (825 A.2d 1252)

Com. v. Taylor (831 A.2d 661)

Com. v. Williams (832 A.2d 962)

TOTALLY CONCURRENT:

Although defendant's prior sentences were to be served concurrently, they were not totally concurrent, for purposes of calculating defendant's prior record score; original sentencing court did not intend sentences to be totally concurrent, given that it did not sentence the most serious conviction offense first, and each sentence imposed actually increased maximum sentence.

Sentencing Guidelines Q&A...

Topic... DUI Legislation (Act 2003-24)

Do the sentencing guidelines apply to DUI sentences under the new legislation?

Yes. The mandatory sentencing provisions dictate the minimum sentence that must be imposed by the court, based on the current and certain previous DUI convictions. However, the sentencing guidelines also take into account previous convictions for other offenses. As a result, in some cases, the guideline recommendation may call for a longer period of confinement than that required by the mandatory minimum provision. In such cases, the court must first consider the guidelines, and if the court decides to depart from the guidelines, must

provide a reason for the record. The court may not impose a sentence shorter than the mandatory minimum.

What are the offense gravity score (OGS) assignments for the various sections of the new DUI statute?

The OGS assignment is linked to the grading of the offense. The new DUI statute includes three grades of offenses: ungraded misdemeanor, Misdemeanor 2, and Misdemeanor 1. The OGS assignments are as follows:

- ⇒ OGS 1—ungraded misdemeanor
- ⇒ OGS 2—M2
- ⇒ OGS 3—M1

Does SGS Web include the new DUI offenses and penalties?

It will by February 1, 2004, when the new provisions take effect. The *SGS Web* application will have three categories of offenses: Controlled Substances; Non-Controlled Substances; and Vehicle Code. Users will be required to pick the grading of the current offense, and will be provided with a pull-down list of sections of the statute that correspond with the grade, as well as the mandatory penalties that correspond with the section.

FYI... several technical errors have been found in Act 2003-24. Legislation is pending to correct these errors.

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The Pennsylvania Commission on Sentencing is an agency of the General Assembly located on the University Park campus of the Pennsylvania State University. The Commission was created in 1978 for the primary purpose of creating a consistent and rational statewide sentencing policy to promote fairer and more uniform sentencing practices.

The *Monitor* is a quarterly publication of the Commission. All inquiries should be directed to the Commission at the address or numbers listed above.

MONITOR (FALL 2003)

RESEARCH BULLETIN & 2004 CALENDAR INSERT

Commonwealth v. Wilson (829 A.2d 1194) (PA Superior Court, 7/25/2003)

"... Although appellant cites 18 Pa.C.S.A. § 6317, Drug-free school zones, as the basis for the school zone enhancement, we find that section establishes a mandatory minimum sentence: in contrast, sections 303.9(c) and 303.10(b) of the Pennsylvania Administrative Code, 204 Pa.Code § 303.9(c)(2), 10(b), authorize the school zone enhancement under the Sentencing Guidelines, the question at issue in this case....

"... Synthesizing the holdings of the cases discussed supra and applying them to the facts before us, we conclude the following: 1) delivery of a controlled substance in a school zone is not an element of the crime to which appellant pled guilty (Graham, supra; Kreiser, supra); 2) the school zone enhancement provision is a sentencing guideline provision, not a mandatory sentencing provision; therefore, because the enhancement did not involve an element of a crime to which appellant did not plead guilty, the Commonwealth was not required to inform appellant it was invoking the provision before appellant entered his guilty plea (Kreiser, supra; Septak, supra, Taylor, supra; Rizzo, supra); 3) because the Commonwealth invoked the sentencing enhancement provision and not a mandatory sentencing provision, appellant was not entitled to reasonable notice before sentencing that the Commonwealth intended to invoke the provision (Rizzo, supra); 4) therefore, at sentencing, appellant was only entitled to a finding by a preponderance of the evidence by the sentencing court that the delivery of a controlled substance occurred within 1,000 feet of a school (Graham, supra; Kreiser, supra). ...

"... In this case, the Commonwealth presented no evidence at sentencing that the site of the drug buy was within 1,000 feet of a school and the sentencing court made no such finding. The only evidence that the school zone enhancement applied was the Guideline Sentencing Form; however, even that form did not indicate the factual basis for application of the enhancement. We therefore find that the sentencing court erred when it applied the school zone enhancement with no facts in the record--either the complaint, the information, the guilty plea colloquy, or the sentencing hearing--to support the enhancement. As a result, we are constrained to vacate appellant's sentence and to remand for re-sentencing."